

McMANIMON & SCOTLAND

ATTORNEYS AT LAW

TRENTON, NEW JERSEY 08608-1104
172 WEST STATE STREET
(609) 278-1800
FAX (609) 278-9222

ONE GATEWAY CENTER
NEWARK, NEW JERSEY 07102-5311
(201) 622-1800
FAX (201) 622-7333
FAX (201) 622-3744
Direct Dial Number: (201) 622-5027

WASHINGTON, D.C. 20004-2404
1275 PENNSYLVANIA AVENUE, N.W.
SUITE 500
(202) 638-3100
FAX (202) 638-4222

May 5, 1995

Tom Sherman, Chief
Bureau of Hazardous Waste Engineering
Hazardous Waste Regulation Program
NJDEP
CN 421
Trenton, New Jersey 08625

Re: CPS Chemical Draft Hazardous Waste Facility Permit
EPA Id No.: NJD002141190

Dear Mr. Sherman:

This firm serves a special environmental counsel to the City of Perth Amboy (City). On behalf of the City, we submit the following written comments and exhibits regarding the draft Hazardous Waste Facility Permit (Permit) issued for the CPS Chemical Co. ("CPS") facility located in Old Bridge Township. The facility is located immediately adjacent to, and upgradient of, the Runyon Watershed, which serves as the drinking water supply for the City, Old Bridge Township and South Amboy. The City opposes the issuance of a permit to the CPS facility and requests that the New Jersey Department of Environmental Protection ("Department") seek termination of CPS' existing facility status because the facility constitutes a threat to the Watershed and the public health.

In general, the City finds that the Permit record contains incomplete and outdated information regarding the contamination of the Watershed and the history of CPS' operations. More specifically, the record reveals that (a) CPS has failed to comply with the operational requirements of an existing facility; (b) CPS has not complied with the application requirements for an existing facility or a RCRA permitted facility; (c) CPS has not demonstrated sufficient



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competency and reliability in the area of hazardous waste management to qualify for a permit; and (d) corrective action requirements have not been appropriately addressed.

I. EXISTING FACILITY STATUS

As you recall, at the March 9, 1995 Permit hearing, the City's consulting engineer, Killam Associates, presented testimony regarding the presence of contamination in the Watershed as a result of the operations of CPS. The City offered to supplement the information upon the Department's request; however, the City informed the Department that an extensive record of the contamination exists in the Department's Bureau of Federal Case Management offices. An appropriate determination of the impact of the CPS operations on the Watershed can not be made without reference to these records.

CPS is a RCRA facility and has been on the National Priority List since 1983. It is a Superfund site precisely because CPS has been unable to operate its hazardous waste facility in compliance with law. Notwithstanding that CPS has been the sole operator, since the site was undeveloped land, CPS claims to have no knowledge of why there is extensive contamination in the soils and water on, under and down-gradient of the facility. CPS has not submitted any data to counter the existing data that releases have occurred and continue to occur at the facility.

In response to the City's inquiry at the public hearing, the Department informed the City that CPS has been operating since 1980 as an "existing facility". This very important fact is not mentioned in the draft permit. In fact, the permit does not reference that the initial application for a permit was made in 1985, nor does it mention that CPS has been operating the facility involving hazardous waste since 1969.

As set forth below, CPS has failed to operate its facility in compliance with the existing facility regulations and, therefore, the operations should be terminated.

A. Failure to Operate Existing Facility in Compliance with Judicial and Administrative Orders 7:26-12.3(e)

N.J.A.C. 7:26-12.3(e) requires existing facilities to operate in compliance with "all conditions and requirements of any... judicial or administrative order... issued to the owner or operator of the facility". The Permit record does not contain any of the judicial or administrative orders that have been issued to CPS, except for a brief reference to the 1981 Order issued by Middlesex Superior Court Judge Furman. The incomplete record does indicate that in 1992, in response to an order to show cause file by the City, Middlesex County Superior

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Court Judge Hamlin found CPS to be in violation of a judicial order issued in 1988 by Judge Keefe (See 1992 Order, Exhibit A). The 1988 order required CPS to implement remedial measures to capture and control a contaminant plume caused by CPS' operations (See 1988 Order, Exhibit B). To supplement the Permit record we also attach copies of the 1981 and 1983 Orders which we are not contained in the Permit record (See Court Orders, Exhibits C & D).

In the 1992 Court decision, Judge Hamlin found that CPS' failure to implement the prior court ordered remediation, caused a danger to the Watershed and public health requiring emergent measures:

What has been astonishing to me throughout is having fought hard to obtain specific remedies and benefits ordered by the courts, the parties have treated those court ordered remedies with little if any respect. Almost immediately after each Court Order the parties proceeded as if the court's orders were benign suggestions and council as opposed to orders of the court.

The mandate upon which consultants were retained initially, was not how to carry out the order of the Court but rather to provide more cost effective methods and alternatives to what which were ordered by the Court. During the last hearing wherein Judge Keefe for a second time retained an outside expert for unbiased assistance and reached an extensive resolution of the issue, the parties shortly thereafter, after some negotiating began to abandon the very remedies that he ordered and that they fought to get. The partial slurry wall became the goals. The recovery wells were not installed and not even begun for approximately another three years. The financial security bonds were never seriously pursued. No plans for the relocation of the brook even were begun. That sort of almost cavalier attitude towards the labors of the court have somewhat discouraged me in believing that that which I hope to do will be effective...

Clearly the failure of the Court to act quickly would necessarily either permit this aquifer to become unuseable or make it so expensive to remediate at a later date as to pose an impossible burden on, either on the taxpayers of the City or of the State in that regard. I determine that there is a prima facie danger of the

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encroaching contamination of both of volatiles and the metals which will deleteriously affect the water supply if not checked or acted upon quickly.

I now determine, having heard all the evidence, determine by the preponderance of the evidence, that in fact that danger does exist, thus requiring the action of the Court.

(See Hamlin Transcript, Exhibit E)

In light of the fact CPS was found to be in violation of a prior judicial order while operating as an existing facility, the Department must terminate CPS' existing facility status, in accordance with N.J.A.C. 7:26-12.3(e).

B. Failure of CPS to Operate without Threat to Human Health and Environment 7:26-12.3(a)

Existing facility status also terminates if it is found that the continued operation of a facility constitutes a threat to human health or the environment. While the Department's Central Enforcement Files and Bureau of Case Management contain abundant information concerning the actual and potential threat to the Watershed and public health as a result of CPS operations, very little of this information is contained in the Permit file, other than the information submitted by members of the public at the prior permit hearing. Only one letter, from Assistant Commissioner Lance Miller, dated July 8, 1991, makes any reference to the impact of CPS' operation on the Watershed. It states:

While the Department still has general concerns over the proximity of a hazardous waste facility to a potable water supply (rendered unusable, in part, by actions of this company), from the documentation submitted by CPS Chemical Company, Inc. it appears that the facility can be operated in such a way as to sufficiently reduce the risk of further contamination from the operations. In addition, the contamination of the former potable water supply is currently being remediated.

This letter predates 1992 sampling performed by USEPA at the request of the City, which proved that contamination from CPS had spread to the City's supply wells. (See USEPA Sampling Results, Exhibit F). Less than one year after the date of Mr Miller's letter, he testified before Judge Hamlin that the contamination had spread to the City's wells. As set forth

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above, Judge Hamlin determined that there was an immediate threat to the drinking water supply which required emergent action. Notwithstanding this judicial determination of threat to the water supply, the Department did not terminate existing facility status.

The Permit record does not contain specific information regarding the new and progressive contamination from CPS which continues to threaten the Watershed and public health. In 1993, sampling of monitoring well WE-2 at the CPS' facility revealed a large chlorobenzene hotspot in excess of 10,000 ppb. Although CPS was aware of the existence of this hotspot as early as February 1993, CPS did not report its findings to the City or the State, until almost 6 months later, in June 1993. This hot spot constitutes a clear and continuing threat to the Watershed.

CPS denies any knowledge of the source of this new contamination or of any releases from the facility; however, CPS has not submitted any proof to substantiate this claim. In fact, contrary to CPS' claim, CPS' Production Superintendent, Fred Geltz, testified before the Office of Administrative Law in 1992 about CPS' prior use of chlorobenzene as well as toluene. Mr. Rowe also acknowledged the ongoing use of toluene and methylene chloride. DEPE v. CPS Chemical Company, OAL DKT. No. EWR 9044-92

Unless, and until, CPS establishes that its operations have not caused and continue to cause this contamination, the Department must terminate CPS' existing facility status because of the continuing threat that the operation poses to the Watershed and public health.

In September 26, 1991, the City was informed by the press of an explosion that occurred at the CPS facility which caused the death of one person. The City immediately contacted the Department to determine if appropriate precautions were being taken to protect the City's water supply. No record of this explosion or the response, if any, is contained in the Permit file. Testimony at the March 9, 1995 permit hearing by the Old Bridge Fire Department demonstrates that CPS has continuously failed to establish an appropriate level of response with respect to fires and explosions at the Facility. Such inadequacy, particularly in light of this recent incident, constitutes a continuing threat to human health and the environment.

C. CPS' Misrepresentations and Omissions in Permit Applications Violates Existing Facility Requirements

Pursuant to N.J.A.C. 7:26-12.3(f), existing facility status terminates if there is a misrepresentation in any part of the Permit application. Over the years, CPS has been cited for numerous deficiencies in both its Part A and Part B applications. The Department has been

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unreasonably tolerant of major deficiencies and delays which have allowed the existing facility status to continue in violation of the regulations.

As part of the Part B application, CPS is required to submit an Alternate Information Statement ("AIS"). Section 6 of the AIS requests the applicant to list and explain any "notices, administrative orders, or license revocations issued by a state or federal authority citing any violation of any environmental regulation against the business concern seeking a permit". CPS' AIS response, dated October 1, 1993 and certified to by Mark Rogart, lists only selective notices of violations dating back to 1984 despite the fact that the AIS contains no time limitation for the response. CPS' response makes no reference to the 1991 administrative order issued by the Department to CPS requiring CPS to conduct a Remedial Investigation and Feasibility Study (RI/FS). This administrative order became necessary when CPS refused to adequately investigate the sources of contamination at the facility. Until this investigation is completed, CPS' claim that its operation poses no threat to the Watershed is unsubstantiated. The City's drinking water supply should not be held hostage by the continuing threat of this operation simply because CPS does not know why its operation caused and continues to cause contamination.

Section 5 of the AIS requests a list and explanation of any "judgment of liability under any, state or federal statute or local ordinance concerning hazardous waste management". CPS' response to this request is "none". CPS misrepresents the status of its liability to the City and the State by failing to list the orders entered against it in 1981, 1983, 1988 and 1992, as mentioned above. Just as disturbing, is CPS' failure to disclose a June 22, 1978 Court Order requiring CPS to initiate a plan for safeguards and containment to prevent further releases and spills to the environment.

On April 12, 1985, CPS submitted an AIS which lists the 1981 Superior Court Judgment. With respect to that Judgment, CPS states on page 10, "DEP and the A.G.'s office are in the final stages of working out a consent decree with CPS which will set aside the outstanding judgment". This information misrepresents the scope of the consent decree. Although it is true that DEP and CPS negotiated a revised remediation plan over the City's objection, it is a misrepresentation to state that the outstanding judgment would be set aside with respect to CPS' liability for the contamination.

Misrepresentations are also contained in prior Permit applications. On May 7, 1986, CPS submitted its response to the Part B HWSA questionnaire which required the identification of any prior releases. CPS responded that there were no releases. Blatantly absent from CPS' response is the identification of the release of 3,000 gallons of triethylene glycol on May 24,

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1976 from rail cars on the site. Records of this major spill are contained in the Central Enforcement File (See 1976 Spill File Memo, Exhibit G). Samples of the groundwater at that time showed high concentrations of benzene, toluene, xylene and dimethylaniline. There are no Permit records indicating what response was taken to address the spill, nor is there any explanation from CPS as to why a spill of triethylene glycol resulted in sampling results of a whole host of other contaminants in the groundwater. Also not disclosed was a spill on April 10, 1979 which was the subject of a Department investigation. Neither of these spills were identified in the most recent questionnaire response.

The City is seriously concerned about the presence of soluble organics, including triethylene glycol, which is still present in the Watershed. We have repeatedly requested that further testing be performed to identify the full extent of the threat to the Watershed and public health. The soluble organic contamination is particularly a concern because the stripping tower for volatile organics does not remediate soluble organics.

The HWSA questionnaire response also states that any releases prior to 1975 have not been "substantiated as to time and materials". CPS' response disregards the 1978 Court Order which required CPS to address releases and spills on the site by designing and constructing a containment system. It also demonstrates that CPS chooses to operate its facility in ignorance of the effect such operations have on surrounding water supplies.

Finally, although CPS' response to the questionnaire denies liability for all VOCs except methylene chloride, it is apparent from the Permit record (specifically the NJPDES filings) that CPS generated triethylene glycol, toluene, and other solvents which have been found in the Watershed. In its response, CPS states that, "only one substance handled by CPS, namely methylene chloride, was found in the groundwater". These statements are false. As evidenced by the Superior Court proceedings, chlorobenzene was found in the groundwater. And, as evidenced by the Administrative Law proceedings, CPS admitted to using chlorobenzene.

CPS' continuing misrepresentations in its applications and failure to disclose releases and enforcement actions, are the basis for termination of its permit under section N.J.A.C. 7:26-12.3(f).

D. CPS Operations Exceeds Design Capacity and Operational Limits

Pursuant to N.J.A.C. 7:26-12.3(b), existing facilities must not exceed design capacities or operational limits specified in Part A of the permit application. CPS has exceeded and

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continues to exceed the design capacity and operational limits of its existing facility status in violation of the regulations.

CPS has a history of exceeding its design capacity, as reflected in the notices of violations issued in June, July and November of 1990 (See Taylor Memo, Exhibit H) as a result of CPS accepting material not reflected in the Part A application and using 6 tanks for storage of hazardous waste that exceeded the capabilities and operational limits specified in Part A.

The 1995 draft Hazardous Waste Facility Permit authorizes CPS a maximum storage and treatment capacity of 206,134 gallons of ignitable hazardous waste, spent non-halogenated solvents and spent laboratory chemicals at the Old Bridge facility. The Draft Permit authorizes CPS a cumulative design storage capacity of 175,134 gallons in ten (10) aboveground storage tanks. A review of correspondence from CPS to the Department dated July 30, 1993 and the relevant Permit applications documents indicates that the true capacity in the permitted aboveground storage tanks is probably 191,134 gallons. The listing of aboveground tanks in the Draft Permit indicates that Tank Nos 41-44 have an individual capacity of 31,000 gallons. According to information submitted by CPS and Department files, at least one of these tanks (Tank #41) has a capacity of 35,000 gallons. Based upon the documentation reviewed, it appears that Tank Nos 42-44 are replacement tanks for Tank Nos 38-40 which had a capacity of 35,000 gallons. Assuming that the replacement tanks were of the same capacity of the prior tanks, the actual storage capacity in the aboveground tank farm is 16,000 gallons greater than the capacity given in the draft Permit. Factoring in the permitted capacities of the drum storage area and reactor R-3, the true design capacity is 222,134 gallons of hazardous waste exclusive of piping and satellite accumulation areas.

As recently as January 1995, CPS was exceeding the permitted capacity by 60,000 gallons. The January 18, 1995 Department inspection found that three rail cars were being used to store waste received from the CPS facility in Arkansas. This waste was received on November 18, 1994, but was not completely transferred to a hazardous waste storage tank until January 7, 1995 (See Pagodin Letter, Exhibit I). The waste manifest for these rail car shipments indicated that each rail car held 20,000 gallons of waste methanol solution for a total of 60,000 gallons of waste being stored outside of a RCRA permitted area. Taking into account this material which was stored in the rail cars and the numerous other aboveground storage and process tanks at the site which have been used in the past for both the permitted and unpermitted storage of hazardous waste, CPS has a capacity of much greater than 250,000 gallons and therefore should be classified as a major facility.

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Based upon the above, CPS' has a design capacity which qualifies it as a major hazardous waste facility requiring approval from the Major Hazardous Waste Siting Commission. It's existing facility status must be terminated exceeding the capacity reflected in its Part A submission.

E. The Department Failed to Establish a Record to Rescind the Notice of Intent to Deny

The 1995 Draft Permit references a Notice of Intent to Deny the Permit issued on June 8, 1990. In the Notice of Intent to Deny, the Department determined that the CPS facility, due to its close proximity to the Perth Amboy well field, is a threat to the well field and a danger to human health and the environment. In the Draft Permit, the Department states:

Issues raised during the public comment and documentation provided by CPS Chemical on those issues have been studied by the Department. Subsequent to the issue of the Notice, facility alterations and process changes were initiated by CPS Chemical and modified permit application documents were submitted to the Department in support of their continued interest in operating a hazardous waste facility. Based upon CPS Chemical Company's response to the intent to deny and the alteration of operations at the Old Bridge Facility, it is the Department's position that CPS Chemical Co., meets the regulatory requirements for operation of a hazardous waste facility and that the groundwater supplies are adequately protected. Therefore, a draft permit is being issued on this matter.

While the Department refers very generally to submissions by CPS Chemical Co., nothing in the Permit record addresses the status of the threat to the Watershed and the public health. As discussed above, contamination continues to be discovered in high levels at the facility. Furthermore, results of sampling in the vicinity of the City's production wells reveal that the contamination from CPS has traveled from the facility to the production wells. The information that is available to the Department subsequent to the issuance of Intent to Deny provides a clear basis for a denial of the CPS Permit. The Permit record does not provide a basis for a reversal of the Department's decision to issue a Notice of Intent to Deny as required by N.J.A.C. 7:26-12.11 (a).

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II. CPS NOT QUALIFIED TO OPERATE HAZARDOUS WASTE FACILITY

The regulations set forth the requirements that apply to all permitted hazardous waste facilities. In light of the history of operations at CPS, it is clear that CPS is incapable of meeting the permit requirements and, if CPS had been issued a permit, it would be in serious violation of that permit.

A. Failure to Operate in the Manner that Complies with any Applicable Federal or State Statute Code, Rule or Regulation

Section N.J.A.C. 7:26-9.2 requires permittees to operate their facilities in a manner that does not violate any applicable federal or state statute, code, rule or regulation. CPS' operations violate the New Jersey Water Pollution Control Act, the New Jersey Spill Compensation & Control Act and the Solid Waste Management Act, to mention only a few, due to its unpermitted releases of hazardous contaminants into the Watershed.

Section 9.2 also prohibits facilities from being operated in the manner which causes or may cause an unauthorized discharge of pollutants into surface water or groundwater. Again, the unexplained discharge of extremely high levels of chlorobenzene at the CPS facility in 1993 violates state and federal law and disqualifies CPS from permitting.

Permitting the operation of this facility in proximity to the watershed also violates the Federal Safe Drinking Water Act's Wellhead Protection Program. Wellhead Protection is designed to protect the drinking water supplies from pollutant sources such as CPS. The Permit record does not address the impact this facility has on the Wellhead Protection Program.

B. Failure to Properly Inspect the Facility for Malfunctions or Deterioration, Operator Errors and Discharges

N.J.A.C. 7:26-9.4(f) requires CPS to perform inspections of its facility, specifically to determine whether there are any discharges which may be causing or may lead to a discharge of hazardous waste constituents into the environment. CPS has demonstrated its inability and/or unwillingness to thoroughly inspect its facility in order to detect serious discharges such as the recent chlorobenzene discharge. Furthermore it has not demonstrated that the purported containment system is effective in preventing such discharges from reaching groundwater.

C. Failure to Demonstrate Ability to Comply with 24 Hour Reporting Requirements

N.J.A.C. 7:26-12.4 specifically requires CPS to orally notify the Department, within 24 hours, of information concerning releases of any hazardous waste that may cause an

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endangerment to public drinking water supplies. This Subsection also specifically requires CPS to orally report, within 24 hours, any information of a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste facility which could threaten the environment or human health outside the facility. CPS' failure to immediately report to the Department and the City the chlorobenzene contamination in 1993, or to notify the City of the explosion in 1991, demonstrates CPS' lack of commitment or ability to meet this Permit requirement.

D. Failure to Demonstrate Competency and Reliability in the Area of Hazardous Waste Management in Compliance with N.J.A.C 7:26-12.10

Within 150 days of the receipt of the Disclosure Statement or the AIS, the Department is required to determine whether CPS has demonstrated:

sufficient indication of competency and reliability in the area of hazardous waste management to warrant the submission of a Part B application. Such indication shall include a preliminary evaluation of the character of the applicant and the applicants history of compliance with or violation of all relevant laws, rules and regulations concerning hazardous waste management in this state or elsewhere.

Under this regulation, it is the Department's responsibility to seek any information from CPS that is necessary to make this determination. Records contained in the Department's Central Enforcement files, Bureau of Case Management files, and Attorney General files, clearly demonstrate CPS' lack of competence and reliability with respect to hazardous waste operations.

CPS began operations on the site in 1969. Less than two years later, contamination from the facility was detected in the Watershed. Thereafter, CPS' operation of the facility was so incompetent that it provoked a Court to order the immediate installation of containment measures in 1978. This was followed by a string of court ordered remedies that were never implemented by CPS, and a serious criminal action with respect to employees of CPS tampering with monitoring wells. The Permit record does not demonstrate that CPS is competent or reliable; in fact, it demonstrates just the opposite. The Department has not established a reasonable record to comply with this regulation.

III. RCRA CORRECTIVE ACTION

The Draft Permit provides that "at a later date USEPA will follow-up with a Hazardous and Solid Waste Amendments permit to identify and address all solid and hazardous waste management units at the site". This provision also existed in the 1989 draft permit. There is little information in the Permit record as to any activity with respect to corrective action, notwithstanding the existence of sources of contamination which require corrective action.

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Again, this may be due in part to misrepresentations made by CPS in its response to the HSWA questionnaire.

The Permit record contains a copy of a letter dated May 14, 1985, from J.A. Rowe, of CPS, to Richard Walka of USEPA. The letter forwards a copy CPS' responses to the RCRA questionnaire (See Questionnaire, Exhibit J). Although the questionnaire response does not contain all pages of the original questionnaire, it is clear that one of the questions seeks information regarding "any releases" (a broadly defined term) on the site. CPS' answers the questionnaire by stating, "No known spills, overflows, ruptured tanks, pipelines or similar malfunctions reported". Distinctly missing from CPS' response is an explanation of the prior court order in 1978 requiring CPS to build a containment system because of releases from the operation. Also missing are any references to the other releases discussed above.

A former employee of CPS, employed from 1975 to 1979, submitted the following testimony with respect to the 1989 draft permit (See Kiraly Letter, Exhibit K). In his testimony Mr. Kiraly states that:

In 1979, I witnessed approximately 5,000 leaking drums in the rear of the plant. Storing these drums on top of a watershed is totally absurd I thought, but no one cared. At that time we dug up foundations for new tank farms and encountered purple dirt and an unbelievable order. It all looks pretty now, but what is under the asphalt will eventually kill people, maybe soon.

Mr. Kiraly also testified that an employee of CPS had tampered with monitoring wells by pumping them with clean water prior to a Department inspection. Although the Permit record indicates a follow-up meeting with Mr. Kiraly regarding the well tampering, no action appears to have been taken regarding the existence of material historically dumped beneath the asphalt paving (See NJDEP Memo, Exhibit L). It is the City's belief that these containment measurers became necessary because of CPS' prior disposal practices which caused unpermitted discharges and releases to the environment.

Most disturbing with respect to this Permit application is the fact that CPS continually asserts that the concrete and asphalt paving and berms contain and prevent releases. Nothing in the Permit record or the Central Enforcement files addresses the issue of why the concrete and berms were installed in the first place. Also absent from the record is any description of the hazardous waste practices of CPS during the 10 years of operation prior to the installation of the purported containment system. The City is extremely concerned that the containment system was installed over large areas of prior uncontrolled discharges which continue to be slowly released to the Watershed. It is apparent from the 1978 Order that CPS' operation

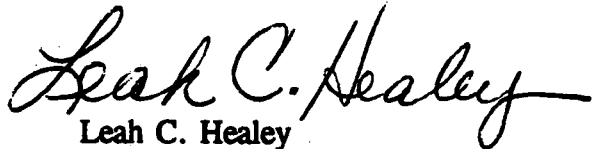
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amounted to an uncontrollable release of hazardous substance into the soils and groundwater. This contamination continues to exist and should have been subject to corrective action long ago.

IV. CONCLUSION

On the basis of the above written comments and the previous oral testimony of the City at the public hearing, the City strongly urges the Department to (a) deny the Hazardous Waste Facility Permit to CPS; (b) to proceed to terminate CPS' existing facility status and (c) to commence appropriate corrective action measures at the facility.

Very truly yours,



Leah C. Healey

LCH:mb
Enclosure

cc: Dennis Gonzalez, Esq.
Larry Pollex, Dir. of MUA
Paul Harvey, Case Manager
Fletcher Platt, Jr., P.E., V.P.
John Osolin, Geologist/Project Manager